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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/037,036	10/25/2001	Jonathan S. Stinson	S63.-9919	5380
490	7590	07/05/2006	EXAMINER	
VIDAS, ARRETT & STEINKRAUS, P.A. 6109 BLUE CIRCLE DRIVE SUITE 2000 MINNETONKA, MN 55343-9185			NGUYEN, VI X	
			ART UNIT	PAPER NUMBER
			3734	

DATE MAILED: 07/05/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/037,036

Applicant(s)

STINSON, JONATHAN S.

Examiner

Victor X. Nguyen

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 17 March 2006.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-23 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-23 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

### DETAILED ACTION

1. Applicant's Response To Restriction Requirement, with respect to claims 1-23 are acknowledged. Therefore, the Restriction Requirement has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of Healy et al (5,670,161). Rejection based on the cited reference(s) follows. The examiner regrets the delay for this new rejection which may have caused.

#### *Claim Rejections - 35 USC § 102*

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-23 are rejected under 35 U.S.C. 102 (b) as being anticipated by Stinson (5,670,161).

Healy discloses in fig 5, a process for forming a stent having the limitations of claims 1-23, including: the process comprises the step of forming a tubular stent of the polymer material (see col.9, lines 22-46); the stent radially expanding to produce an expanded diameter stent, annealing the expanded diameter stent (see col. 10, lines 49-65) that shrinks (see col. 7, lines 50-57) from its expanded diameter to a reduced diameter, and at least one time repeating of steps b) and c) in sequence.

Regarding claims 3 and 23, Healy discloses the stent is formed by molding or etching the polymer material (see col.9, lines 17-21).

Regarding claims 4-5, Healy discloses the polymer material is thermoplastic or biodegradable (see col.3, lines 31-34).

Regarding claims 6-7 and 19, Healy discloses the polymer material is selected from the group consisting of PLA (poly(alpha-hydroxy acid) which is selected from the group consisting of PLA (polyglycolide) (see col.10, lines 35-49).

Regarding claims 8-9, Healy discloses the process has a temperature that is below the glass transition temperature of the polymer material; and wherein the step b) performs at room temperature (see col.3, lines 38-45, lines 54-59 and col.4, lines 57-65).

Regarding claims 10-11, Healy discloses the process has a temperature that is above the glass transition temperature of the polymer material; and wherein the step c) performs at a temperature about 130 degree Celsius (see col.10, lines 1-9).

Regarding claims 12-14 are a product-by-process claim, and according to MPEP § 2113, these claims are not limited to the manipulations of the recited steps, only the structure implied by the steps. The patentability of a product does not depend on its method of production, but on the product itself. Therefore, how the stent is being manufactured is not further limiting the structure of the claimed stent.

Regarding claims 16-20, Healy discloses a medical device adapted for body lumen navigation (see col. 3, lines 31-60).

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Victor X. Nguyen whose telephone number is (571) 272-4699. The examiner can normally be reached on M-F (8-4.30 P.M).

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Hayes can be reached on (571) 272-4697. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Victor X Nguyen  
Examiner  
Art Unit 3734



VN  
6/23/2006



MICHAEL J. HAYES  
SUPERVISORY PATENT EXAMINER